

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF ADOPTION
Rules I through III pertaining to)	
definitions, certification of energy)	
production, transportation, and research)	
facilities for tax abatement and)	
classification)	

TO: All Concerned Persons

1. On December 20, 2007, the Department of Environmental Quality published MAR Notice No. 17-267 regarding a notice of public hearing on the proposed adoption of the above-stated rules at page 2046, 2007 Montana Administrative Register, issue number 24.

2. The department has adopted New Rules I and II (17.80.201 and 17.80.202) exactly as proposed, and has adopted New Rule III (17.80.203) as proposed, but with the following changes, new matter underlined, stricken matter interlined:

NEW RULE III (17.80.203) APPLICATION REQUIREMENTS AND
DECISION CRITERIA: ALTERNATING CURRENT ~~POWER~~ TRANSMISSION

LINES UNDER 15-6-157(1)(q), MCA (1) A person who wishes to obtain a certification of the qualified portion of an alternating current ~~power~~ transmission line pursuant to 15-6-157(1)(q), MCA, shall file an application on a form provided by the department pursuant to ARM 17.80.201. The application must contain the following information:

(a) remains as proposed.

(b) a description of the line for which certification is sought, including its associated equipment and structures, including interconnections;

(i) for lines still under construction at the end of a tax year, this would be a general description of the complete line, with a more detailed description of that portion for which certification is sought;

(c) a listing of all wage rates paid for construction of the ~~power~~ transmission line in Montana, including its associated equipment and structures, including interconnections;

(d) the date construction of the ~~power~~ transmission line, as defined in 15-24-3102, MCA, was commenced in Montana;

(e) the total transfer capability of the ~~power~~ transmission line established through the Western Electricity Coordinating Council (WECC) path rating process, or for transmission lines which are not covered by the WECC path rating process, by the capability determined by the balancing authority under whose jurisdiction the line is;

(f) a list of the Montana electricity generating facilities that are, or will be, class fourteen property under 15-6-157, MCA, for which a firm contract for

transmission capacity for ten years or more service, available throughout each year of the contract, has been obtained, including:

- (i) the location, or proposed location, of each generating facility;
- (ii) the period for which each facility has secured firm contract for transmission capacity service throughout each year;
- (iii) documentation of the amount of firm transmission on the ~~power~~ line that has been secured for each generating facility throughout each year. If this amount is not the same throughout the year, the applicant shall describe the different amounts and the length of periods during which those amounts apply; and
- (iv) remains as proposed.

(2) The qualified portion of a transmission line will be based on the contracts for firm transmission in place at the time of application for the initial ten years of commercial operation, according to the following criteria:

(2) (a) The qualified portion of a ~~power~~ line for which the amount of rated transfer capacity under firm contracted power from contract for electricity generated at class fourteen generating facilities is constant throughout the year is that amount divided by the total transfer capability of the that line established through the Western Electricity Coordination Council applicable path rating process conducted either by WECC or the balancing authority-;

(b) The qualified portion ~~for~~ of a line for which the amount of ~~firm contracted power from~~ rated transfer capacity under firm contract for electricity generated at class fourteen generating facilities varies throughout the year is the weighted average determined according to the following formula: (amount for first period x number of days in period + amount for next period x number of days in period . . .)/365-;

(c) For deliveries to load on the line using firm transmission contracts for a blend of power from multiple generating facilities, the amount that is deemed to come from class fourteen facilities is the percentage of a delivery equaling the percentage of the annual energy portfolio of the commodity provider that is generated from class fourteen facilities located in Montana-;

(d) For lines with a mix of contracts of different length, the qualified portion is the average rated transfer capacity under firm contract determined by the following formula: (annual amount for first contract x contract length during averaging period + annual amount of next contract x contract length during averaging period . . .)/length of averaging period. The averaging period for the initial certification will be the ten years following start of commercial operation.

(3) remains as proposed.

~~(4) A person who has received a certification pursuant to this rule may at any time apply for a certification of a different qualified portion of a power line. An application for a new certification shall contain the information required for an initial certification required pursuant to (1)-.~~

(5) (4) Ten years after a ~~power~~ transmission line becomes commercially operational, the taxpayer shall submit to the department an update of the information required in (1)(e) and (f). Based on this information and any other credible information available to the department, the department shall determine the current qualified portion of the ~~power~~ transmission line and reissue a certificate at that percentage.

(5) If the ~~current qualified portion of the power transmission line is less than the last certified qualified portion of the power line~~ no longer has contracts for firm transmission of electricity operated at class fourteen facilities, the department shall revoke the certification.

3. The following comments were received and appear with the department's responses:

COMMENT NO. 1: Few intrastate power lines in Montana meet WECC path rating criteria. For those lines that do not, the path rating function is performed by the connecting public utility. New Rule III(1)(e) and (2) should be modified to allow those lines to be rated by the public utility.

RESPONSE: The department agrees. The rule has been modified accordingly.

COMMENT NO. 2: Because New Rule I(1) requires that an application for Class Fourteen certification may occur only after project construction has been commenced or completed, it violates 15-24-3111(7), MCA, which provides that the "qualifying period" for certification includes the construction period.

RESPONSE: Section 15-24-3111(7), MCA, defines the term "qualifying period" and indicates that it applies to tax abatements authorized under 15-24-3111, MCA. Certification of a "qualified portion" of a transmission line as Class Fourteen property is governed by 15-6-157(1)(q), MCA, which provides that Class Fourteen property includes the qualified portion of a transmission line that "has commenced construction" after June 1, 2007. The department has therefore not made the suggested change.

COMMENT NO. 3: New Rule III(2) should be modified to provide a Class Fourteen certification for contracted capacity rather than for green energy actually transmitted.

RESPONSE: The department agrees. Section 15-6-157(2)(a), MCA, provides that the qualified portion of a transmission line is based on contracted transfer capacity. The rule has been modified accordingly. In addition, the term "power line" has been changed to "transmission line" throughout the rules to more closely reflect the statutory language.

COMMENT NO. 4: The provision in New Rule III(1)(f) that the facility have firm contracts for transmission capacity "for ten years or more" is not in accordance with 15-6-157(1)(q) and (2)(a), MCA. Those provisions contain no such requirement.

RESPONSE: The department agrees. The rule has been modified accordingly.

COMMENT NO. 5: New Rule III(5) requires that the department revoke a certification ten years after the line becomes operational if the department finds at that time that the qualified portion is less than the portion originally certified. The rule should be modified to provide for certification of the lesser portion. There is

nothing in 15-6-157, MCA, to indicate that the Legislature intended for a revocation to occur if a portion of the line remains qualified because some contracted transfer capacity is dedicated to green energy.

RESPONSE: The department agrees. The proposed rule has been modified to provide for a recertification if a portion of the transfer capacity of a line is contracted for green energy. The rule also has been modified to provide for revocation only if there is no qualified portion at the ten-year mark. Also, the department has eliminated the process for recertification before the ten-year point. That process had been included to allow a transmission line owner to recertify in order to avoid revocation. The changes made in response to the comment eliminate the need for the mid-term recertification.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

By: /s/ Richard H. Oppen

RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, April 28, 2008.